

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  CITY OF LORIMOR	DOCKET NO. P-852
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**PROPOSED DECISION AND ORDER GRANTING PERMIT**

(Issued June 21, 2004)

**APPEARANCES:**

MR. JOHN CASPER, Attorney at Law, Lorimor City Attorney, 223 East Court Avenue, Winterset, Iowa 50273, appearing on behalf of the City of Lorimor.

MR. JOHN DWYER, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

**STATEMENT OF THE CASE**

On February 5, 2003, the City of Lorimor (Lorimor) filed a petition for a pipeline permit for a natural gas pipeline approximately 4.75 miles long in Madison and Union Counties, Iowa. (petition for permit; testimony of Ms. Seales; Helm and O'Neal reports). Lorimor amended its petition on August 4, October 23, October 29, 2003, and on January 14, 2004. (petition for permit). The petition is for an existing pipeline built in 1971 for which a permit was never requested or granted. (petition for permit; O'Neal report; testimony of Ms. Seales, Mr. Helm, and Mr. O'Neal). The pipeline is a transmission line with a maximum allowable operating pressure of 150 pounds per square inch gage (psig) that transports natural gas from a connection with a Natural

Gas Pipeline Company of America (NGP) pipeline in Madison County to the Lorimor town border station. (petition for permit; Helm and O'Neal reports; testimony of Ms. Seales). At the Lorimor town border station, the gas pressure is reduced for delivery through gas distribution mains to customers in Lorimor. (O'Neal report; testimony)

On April 9, 2004, the Utilities Board (Board) assigned this case to the undersigned administrative law judge, who issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing on April 15, 2004. In that order, the undersigned set June 2, 2004, as the date for the hearing on the petition, and proposed to take official notice of two reports concerning the pipeline prepared by Mr. Reed Helm, utility regulatory inspector, and Mr. Jeffrey O'Neal, utility regulatory engineer, for the Board's Safety and Engineering Section, dated May 28, 2003 and April 1, 2004, respectively.

The hearing was held on June 2, 2004, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa. Lorimor was represented by its city attorney, Mr. John Casper. Ms. Mary Seales, City Clerk for Lorimor, and Mr. Bob Halligan, retired utility inspector, testified on behalf of Lorimor. (testimony of Ms. Seales, Mr. Halligan). Mr. Reed Helm and Mr. Jeffrey O'Neal testified on behalf of the Board. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John Dwyer. At the hearing, the parties requested the opportunity to file briefs on the question of whether the statute in effect in 1971 was clear as to whether a permit was required for the Lorimor pipeline. The

request was granted, and the parties agreed on a briefing schedule, which was approved in an order issued June 4, 2004.

The Consumer Advocate filed a brief on June 9, 2004. Lorimor filed a brief on June 17, 2004.

### **DISCUSSION REGARDING ASSESSMENT OF CIVIL PENALTY**

Iowa Code § 479.31 (2003) provides that a person who violates Chapter 479 or a Board rule issued pursuant to the chapter is subject to a civil penalty not to exceed \$10,000 for each violation. The statute further provides that each day the violation continues constitutes a separate offense, but the maximum civil penalty is \$500,000 for any related series of violations. Iowa Code § 479.31. The statute provides that in determining the amount of the penalty, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after notification of a violation, shall be considered. Iowa Code § 479.31.

The Consumer Advocate does not oppose the grant of a permit, but argues the Board should consider imposing a civil penalty for failure to seek a permit as required in 1971.

Lorimor argues that imposition of a civil penalty is inappropriate in this case for a number of reasons, including that the statute in effect in 1971 when the pipeline was built did not require Lorimor to obtain a permit, since the pipeline's maximum allowable operating pressure was 150 psig.

There is no question that Iowa Code Chapter 479 in effect today requires that the pipeline have a permit. The pipeline at issue in this case is a transmission line with a maximum allowable operating pressure (MAOP) of 150 psig and a length of approximately 4.75 miles. (petition for permit; Helm and O'Neal reports) Iowa Code § 479.3 states that no pipeline company shall construct, maintain, or operate any pipeline except in accordance with chapter 479. Iowa Code § 479.5 states that a pipeline company shall file a verified petition asking for a permit to construct, maintain, and operate its pipeline. A pipeline is defined by § 479.2(2) as "a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids." The only exception to the statute is contained in Board rule 199 IAC 10.16, entitled "When a permit is required," which states that a pipeline permit is required for "any pipeline which will be operated at a pressure of 150 pounds per square inch gage or more, or which, regardless of operating pressure, is a transmission line as defined in ASME B31.8 or 49 CFR Part 192. Questions of whether a pipeline requires a permit are to be resolved by the board."

Iowa Code § 479.5 further provides that a pipeline company seeking a permit for a new pipeline must hold an informational meeting for the public prior to filing the petition. Section 479.5, as it is currently written, states that "For the purposes of the

informational meeting, . . . 'pipeline' means a line transporting a solid, liquid, or gaseous substance, except water, under pressure in excess of 150 psi and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles [emphasis added]." Board rule 199 IAC 10.3 also requires an informational meeting for any proposed pipeline over five miles in length that is to be operated at a pressure of over 150 psi.

However, the statute in effect in 1971 when this pipeline was constructed contains one critical difference in language from that in effect today. Iowa Code § 490.5 (1971) is essentially the same as current Iowa Code § 479.5, with one important difference. In 1971, the section required a pipeline company to file a petition for a pipeline permit and required an informational meeting, the same as is currently required. However, the 1971 statute states, "For the purposes of this section, . . . 'pipe line' means any line transporting gas, gasoline, oils, motor fuels, or inflammable fluids under pressure in excess of 150 psi and extending a distance of not less than five miles or future anticipated extension of an overall distance of five miles." Iowa Code § 490.5 (1971). Although this sentence is contained in the unnumbered paragraphs discussing the informational meeting requirement, not the requirement to file a petition for a permit, the legislature stated the exclusion was for the purposes of "this section." The section includes the requirement to file a petition for a permit. "We determine legislative intent from the words chosen by the legislature, not what it should or might have said." Auen et.al/v. Alcoholic Beverages

Division, No. 42/02-1762, Iowa Supreme Court (May 12, 2004). Although the location of the sentence in the section makes it somewhat unclear, the words used are "this section" not "the informational meeting." Therefore, in 1971, when this pipeline was constructed, the statute did not require Lorimor to file a petition for a permit for this pipeline, since it had an MAOP of 150 psig and was 4.75 miles long.<sup>1</sup>

In 1988, the legislature amended the pipeline statute. 1988 Iowa Acts, Chapter 1074. The stated purpose of the act was to establish a new chapter to define jurisdiction over interstate natural gas pipelines. 1988 Iowa Acts, Chapter 1074. However, section 29 of the act amended Iowa Code § 479.5, and among other things, changed the words "this section" to "the informational meeting." The chapter was approved April 12, 1988, and was therefore effective July 1, 1988. The change was published in the 1989 Iowa Code.

Therefore, as of July 1, 1988, Lorimor should have applied for a permit to maintain and operate its pipeline. Whether a civil penalty should be assessed for the failure to apply for a permit when the statute changed is an issue to be considered.

Iowa Code § 479.31 provides that in determining the amount of a penalty, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after

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<sup>1</sup> The 1971 volume of the Iowa Departmental Rules contains pipeline rules of the Commerce Commission. Commerce Commission rule 10.14 (490), titled "Distribution mains," states that "No petition need be made for permit to construct, operate or maintain a gas main or distribution main as technically defined in ASA B31.8-1963 and which will be operated at a pressure of less than one hundred fifty pounds per square inch." The rule does not apply to the pipeline at issue in this case because it is a transmission line.

notification of a violation, shall be considered. Each case is fact sensitive and is to be judged on its own merits. In re: Interstate Power and Light Company, Docket No. P-850, Order Affirming Proposed Decision and Order Granting Permit and Waiver, p. 6 (November 17, 2003).

The Board and the undersigned administrative law judge have considered assessment of civil penalties in four prior cases: In re: Corn Belt Power Cooperative, Docket No. E-21570, Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (February 1, 2002) (Corn Belt I); In re: Corn Belt Power Cooperative, Docket No. E-21519, Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (August 28, 2003) (Corn Belt II); In re: Interstate Power and Light Company, Docket No. P-850, Order Affirming Proposed Decision and Order Granting Permit and Waiver (November 17, 2003) (Interstate Power); and In re: Moulton Municipal Gas Company, City of Moulton, Docket No. P-853, Proposed Decision and Order Granting Permit (January 21, 2004) (Moulton).

The Corn Belt cases involved failure to seek an electric franchise prior to construction rather than failure to seek a pipeline permit prior to construction. Although there are differences in the amounts and types of penalties that may be imposed for violations of the electric franchise and pipeline permit statutes, the factors to be considered in compromising or determining the amount of the penalty are the same. Iowa Code §§ 478.24, 478.29, and 479.31. Therefore, the Corn Belt

cases are sufficiently analogous so it is valid to consider them as guidance regarding the appropriate penalty in pipeline permit cases.

In Corn Belt I, Corn Belt filed a petition for a franchise to construct an electric line in December 2001, but began construction of the line prior to receiving the franchise. Board staff discovered the violation and notified Corn Belt that construction must cease immediately and not resume until a franchise was obtained from the Board. Corn Belt immediately ceased construction activities after this notification, accepted full responsibility for the violation, and by motion and affidavit, asked the Board to impose the appropriate penalty without hearing. In imposing a civil penalty of \$600, the Board stated: "While the Board finds the violation to be serious, Corn Belt's actions are mitigated by the fact it immediately ceased construction after notification from Board's staff. Corn Belt has also accepted responsibility for the violation and taken corrective action so similar violations will not occur in the future." The Board also stated: "Since this is the first time this has happened, there is no reason to assess the maximum fine." Corn Belt I Decision, pp. 5-6.

In Corn Belt II, Corn Belt converted a segment of single circuit transmission line to double circuit without first filing a petition for amendment of its electric franchise in February 2003. Corn Belt became aware of the violation in May 2003 and immediately notified Board staff. The Board stated it did not view the violation to be as serious as that in Corn Belt I. Although Corn Belt promptly reported the



violation and began corrective action, took steps to prevent additional violations in the future, and the violation was inadvertent, the Board imposed a civil penalty of \$300 because it was the second violation by Corn Belt in less than two years. In the Corn Belt II Decision, the Board stated the following: “By bringing this action and assessing this fine, the Board puts all companies on notice that franchise requirements must be followed. However, the Board recognizes that there are some violations that may have occurred many years ago that have only recently been detected. The Board encourages companies to report any such violations immediately and to cooperate with the Board’s staff in remedying such violations. Any penalties that may be imposed would likely be mitigated if the violations are self-reported and not discovered by the Board’s staff. The companies should also examine their processes, like Corn Belt has, to see if additional personnel or training are needed to ensure future compliance with the Iowa statutes and Board rules.” Corn Belt II Decision, p. 5.

The Interstate Power case involved a failure to obtain a permit for a pipeline constructed in 1980 and 1982 when a permit was clearly required as of 1982. Interstate Power did not discover it had failed to obtain the required permit until August 2002. In reaching a decision not to impose a penalty, the undersigned and the Board considered that the company discovered the violation, immediately contacted the Board upon discovery, promptly filed a petition for a permit, took steps to prevent future violations, did not have any other known violations of this nature,

constructed, operated, and maintained the pipeline in conformance with all other Board rules, and that there was no safety issue associated with the pipeline. Also considered were the facts that the violation was committed by prior staff who no longer worked for the company and current staff exhibited exemplary behavior once the violation was discovered. Therefore, the decisions held that imposition of a civil penalty would not serve a valid punitive or deterrent purpose. In its decision affirming the proposed decision and imposing no penalty, the Board stated: "The evidence supports the ALJ's findings that IPL's actions fully mitigated imposition of a civil penalty. This is consistent with the Board's decision in Corn Belt regarding self-reported violations that occurred many years ago." Interstate Power Decision, p. 5.

Although the Moulton case involved the failure to timely renew a permit, rather than the failure to obtain a permit when one was required, the case is sufficiently analogous so it is valid to consider it as guidance when determining whether a civil penalty should be assessed in this case, and if so, the amount of the penalty to be assessed. At the hearing in the Moulton case, the parties proposed a compromise of the civil penalty issue, in which Moulton agreed to pay a civil penalty of \$375. Moulton Decision, p. 3. Important factors considered in Moulton included that the failure to renew the permit was a relatively recent violation and Board staff, rather than Moulton's staff, discovered the violation. Other important factors included that Moulton was a very small town with limited staff, Moulton cooperated with Board staff upon discovery of the violation and promptly filed a petition for a permit, there were

no other known violations, the pipeline had been operated and maintained in compliance with all requirements other than the failure to renew, there was no safety issue with respect to the pipeline, and Moulton implemented a procedure to ensure its permit would be timely renewed in the future. The parties' proposed compromise was approved. Moulton Proposed Decision, p. 10.

Lorimor has a population of 427 and the municipal gas system serves approximately 200 customers. (testimony of Ms. Seales). Lorimor has one full-time employee and one part-time employee. (testimony of Ms. Seales).

The Lorimor pipeline has been inspected by Board staff approximately every two years since at least 1974. (testimony of Mr. O'Neal, Mr. Helm; Board inspection records). When citations were issued as a result of the inspections, Lorimor timely corrected the matters. (testimony of Mr. Helm, Mr. O'Neal). There have been no major violations of applicable requirements. (testimony of Mr. Helm; inspection records). Mr. O'Neal testified he does not know whether or not Board staff inspected the pipeline when it was constructed in 1971. The Board does not have records of any inspection, although Mr. O'Neal testified he would not necessarily expect to find records from that long ago. The official records of pipeline safety inspections are kept in Board files, and the retention period for them is two years. (testimony of Mr. O'Neal). The early inspection records on the pipeline that were found are copies that individual inspectors kept. (testimony of Mr. O'Neal).

Lorimor contracted with a firm called Utility Consultants to design the pipeline. (testimony of Mr. Halligan). The pipeline was designed by an engineer who worked for Utility Consultants. (testimony of Mr. Halligan). Mr. Halligan worked for Utility Consultants in 1971, but was not involved in construction or inspection of the pipeline at the time. (testimony of Mr. Halligan). Mr. Halligan testified that to the best of his knowledge, Utility Consultants assumed no permit was required because the pipeline would be allowed to operate at 150 psi or less, and that is why Lorimor did not apply for a permit. (testimony of Mr. Halligan).

In approximately November 2002, Mr. Helm discovered the pipeline did not have a permit and notified Ms. Seales. (O'Neal report; testimony of Mr. Helm, Ms. Seales). As soon as Lorimor learned of the requirement for a permit, it began steps to apply for the permit, and filed its petition on February 5, 2003. (testimony of Ms. Seales, Mr. Helm). Lorimor has been cooperative with Board staff in seeking to obtain a permit once it learned one was required, and has worked with Board staff to amend its petition as needed. (testimony of Mr. O'Neal, Ms. Seales).

The Lorimor pipeline is in conformance with pipeline safety standards and there are no safety issues with respect to the pipeline. (petition for permit; Helm and O'Neal reports; testimony of Mr. Helm, Mr. O'Neal). Lorimor has a contract with the City of Lennox to maintain and operate the pipeline in conformance with applicable requirements. (testimony of Ms. Seales, Mr. Halligan). This is the only pipeline owned by Lorimor. (testimony of Ms. Seales).

Failure to obtain a permit when one was required is a serious violation. However, a permit was not required at the time the pipeline was constructed in 1971. A permit became required because the statute was changed in 1988. Failure to seek a permit because the law changed is different than failure to seek a permit when a pipeline company takes some affirmative action such as construction of a pipeline. When a pipeline company plans to construct a pipeline, it must do so in conformance with applicable law, and it therefore must learn what the law requires. In this case, there was no triggering action on the part of Lorimor that would have caused it to know the statute changed. Also, it must be noted that this statutory change was subtle and was contained in a bill that primarily dealt with regulation of interstate pipelines. This is a factor to be considered only in evaluating whether a penalty is appropriate. Cities and companies that own pipelines continue to have an affirmative duty to know what is in the law and comply with it, even if the law changes.

Although it is somewhat troubling that Lorimor did not learn that a permit was required beginning in 1988 and obtain a permit at that time, all other factors weigh against imposition of a penalty in this case. As the Board has stated in prior decisions, these cases are very fact-sensitive and each case will be judged on its own merits. IPL Decision, p. 6. Considering the entire circumstances of this case, it would not be appropriate to impose a civil penalty. (testimony of Ms. Seales, Mr. O'Neal, Mr. Helm, Mr. Halligan; petition for permit; Helm and O'Neal reports). Iowa

Code §§ 479.5, 479.31; Iowa Code § 490.5 (1971); Corn Belt I; Corn Belt II; Interstate Power; and Moulton Decisions.

However, Lorimor is placed on notice by this decision that it has an affirmative duty to learn all applicable requirements regarding its pipeline and comply with them, including the requirements to pay annual inspection fees and file a petition for renewal of its permit prior to its expiration. Iowa Code §§ 479.14, 479.15, and 479.23.

### **FINDINGS OF FACT**

1. Lorimor is a pipeline company within the meaning of Iowa Code § 479.2. (testimony of Ms. Seales; petition for permit).
2. On February 5, 2004, Lorimor filed a petition for a pipeline permit for an existing 2-inch diameter natural gas pipeline approximately 4.75 miles long in Madison and Union Counties, Iowa. (petition for permit; testimony of Ms. Seales; Helm and O'Neal reports). Lorimor amended its petition on August 4, October 23, October 29, 2003, and January 14, 2004. (petition for permit). The petition is for an existing pipeline built in 1971 for which a permit was never requested or granted. (petition for permit; testimony of Ms. Seales, Mr. Helm, Mr. O'Neal; O'Neal report). The pipeline is a transmission line with a maximum allowable operating pressure of 150 psig that transports natural gas from a connection with an NGP pipeline in Madison County to the Lorimor town border station. (petition for permit; Helm and O'Neal reports; testimony of Ms. Seales).

3. The pipeline follows a route described in Exhibit A and shown on Exhibit B attached to the petition for a permit (as amended). (petition Exhibits A and B). It begins at the NGP regulator station in Madison County, Iowa, and runs in a generally southerly direction to the Lorimor town border station in Union County, Iowa. (petition for permit; Helm report). At the Lorimor town border station, the gas pressure is reduced for delivery through gas distribution mains to customers in Lorimor. (petition for permit; O'Neal report; testimony of Ms. Seales).

4. Lorimor caused notice of the hearing to be published in Union and Madison Counties in the Winterset Madisonian, a newspaper of general circulation in the counties, for two consecutive weeks, with the last publication on May 19, 2004. (proof of publication; testimony of Ms. Seales).

5. The pipeline is necessary to supply natural gas to existing customers in the city of Lorimor. (petition for permit; testimony of Ms. Seales; O'Neal report). Therefore, the proposed pipeline promotes the public convenience and necessity as required by Iowa Code § 479.12. (testimony of Ms. Seales; petition for permit; O'Neal report).

6. The pipeline complies with the design, construction, and safety requirements of Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; testimony of Mr. Helm, Mr. O'Neal, Ms. Seales, Mr. Halligan; Helm and O'Neal reports; inspection reports). Lorimor has operated and will continue to operate and maintain the pipeline in accordance with all applicable standards

through its contract with the city of Lenox. (testimony of Ms. Seales, Mr. O'Neal, Mr. Helm, Mr. Halligan; Helm and O'Neal reports; petition for permit; inspection reports). The pipeline has been inspected by Board staff approximately every two years since at least 1974, and Board staff most recently inspected the system on March 21 and July 24-25, 2003. (testimony of Ms. Seales, Mr. Helm, Mr. O'Neal, Mr. Halligan; Helm and O'Neal reports; inspection reports). No further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; testimony of Ms. Seales, Mr. Helm, Mr. O'Neal, Mr. Halligan; Helm and O'Neal reports).

7. There are no problems with the location and route of the pipeline and no further terms, conditions, or restrictions regarding them need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; Helm and O'Neal reports).

8. Lorimor has filed satisfactory proof of its solvency and ability to pay damages in the sum of \$250,000 or more pursuant to Iowa Code § 479.26 and 199 IAC 10.2(1)"d". (testimony of Ms. Seales; petition exhibit D).

9. No written objections to the petition for a permit were filed and no objectors appeared at the hearing. (testimony of Mr. O'Neal; Docket No. P-852 file).

10. Lorimor will not be constructing additional pipeline and will not disturb any agricultural land. (petition for permit).

11. At the time the pipeline was constructed in 1971, a permit was not required. In 1988, the statute was changed, and a permit to maintain and operate



the pipeline was required. Lorimor did not know a permit was required until Mr. Helm informed it of the requirement in approximately November of 2002. (O'Neal report; testimony of Ms. Seales, Mr. Helm). Lorimor immediately began preparing a petition for a permit, and filed it on February 5, 2003. (testimony of Ms. Seales; O'Neal report; petition for permit). Lorimor was cooperative with Board staff in attempting to get the pipeline permitted. (testimony of Mr. O'Neal).

12. The only pipeline Lorimor owns is the one at issue in this case.  
(testimony of Ms. Seales).

### **CONCLUSIONS OF LAW**

1. The Board has the authority to grant, amend, and renew permits for the construction, operation, and maintenance of pipelines for the intrastate transportation of natural gas. Iowa Code §§ 479.1, 479.4, 479.12, 479.18, and 479.29; 199 IAC 9 and 10.

2. The Board has jurisdiction over Lorimor and over the petition for a natural gas pipeline permit it has filed. Iowa Code §§ 479.2, 479.5, 479.6, 479.12, 479.18, and 479.29.

3. Since Lorimor will not be constructing any additional pipeline and will not disturb any agricultural land, it is not required to file a land restoration plan. Iowa Code § 479.29; 199 IAC 9.

4. The petition of Lorimor for issuance of a permit for the natural gas pipeline in this docket should be granted. Iowa Code §§ 479.11, 479.12, 479.26, and 479.29; 199 IAC 9 and 10.

5. Iowa Code § 479.31 provides that a person who violates Chapter 479 or a Board rule issued pursuant to the chapter is subject to a civil penalty not to exceed \$10,000 for each violation. The statute further provides that each day the violation continues constitutes a separate offense, but the maximum civil penalty is \$500,000 for any related series of violations. Iowa Code § 479.31. The statute provides that in determining the amount of the penalty, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after notification of a violation, shall be considered. Iowa Code § 479.31. A permit was not required when the pipeline was constructed in 1971. The first time a permit was required was when the statute was changed in 1988. As discussed in the body of this decision, considering the entire circumstances, it is not appropriate to impose a civil penalty. Iowa Code §§ 479.5, 479.31; Iowa Code § 490.5 (1971); Corn Belt I; Corn Belt II; Interstate Power; and Moulton Decisions.

**IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated May 28, 2003, filed in this docket by Mr. Reed Helm, regulatory inspector, and of the report dated April 1, 2004, filed in this docket by Mr. Jeffrey O'Neal, regulatory engineer for the Board.

2. Pursuant to Iowa Code Chapter 479, the petition for a pipeline permit filed by Lorimor in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.

3. No civil penalty is imposed.

4. Arguments in the briefs not addressed specifically in this order are rejected, either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

5. The Board retains jurisdiction of the subject matter in this docket.

6. This proposed decision will become the final decision of the Board unless appealed to the Board within 15 days of its issuance or the Board votes to review the decision on its own motion. Iowa Code § 17A.15(3); 199 IAC § 7.8(2).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of June, 2004.